Supreme Court, U.S.
FILED
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No. _____

In The

# Supreme Court of the United States

NEIL C. GORDON, as Chapter 7 Trustee for the Estate of Slaughter Company & Associates, Inc.,

*Petitioner,*

v.

ALCATEL CONTRACTING (N.A.), INC.,

*Respondent.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit**

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

1. Whether the Eleventh Circuit erred when it held that an attorney is entitled to rely on Federal Rule of Bankruptcy Procedure 9010 for receipt of the bar date notice and that the failure by the Bankruptcy Court to send formal notice to the attorney is sufficient to negate the clear language of 11 U.S.C. § 726(a) as supported by Federal Rules of Bankruptcy Procedure 3002(c)(5) and 9006(b)(3).

2. In light of this Court's decision in *Pioneer Investment Services Co. v. Brunswick Assoc. Limited Partnership*, 507 U.S. 380 (1993), whether the Eleventh Circuit erred when it held that bankruptcy courts have the inherent power to correct their own mistakes, presumably under the court's equitable power.

3. Whether the policy implications of the Eleventh Circuit's opinion conflict with the clear Congressional intent of expediency and finality in Chapter 7 cases and place an unreasonable burden on trustees in administering Chapter 7 cases.

4. Whether the Eleventh Circuit erred when it allowed an unsecured creditor's late-filed proof of claim to be treated as timely filed, expanding, in effect, the creditor's substantive rights under the Bankruptcy Code and creating a conflict among the Circuit Courts of Appeal.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW ..... i

TABLE OF CONTENTS ..... ii

TABLE OF AUTHORITIES ..... iv

OPINIONS BELOW ..... 1

BASIS FOR JURISDICTION ..... 2

STATUTE AND RULES INVOLVED ..... 2

STATEMENT OF THE CASE ..... 2

ALLOWANCE OF THE WRIT ..... 5

I. THE ELEVENTH CIRCUIT'S DECISION CONTRADICTS THE PLAIN MEANING OF 11 U.S.C. § 726 AS SUPPLEMENTED BY RULES 3002(C) AND 9006(B)(3) ..... 5

II. THE ELEVENTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S DECISION IN *PIONEER* ..... 12

III. THE ELEVENTH CIRCUIT'S DECISION CONTRADICTS THE POLICY BEHIND AN EFFECTIVE LIQUIDATION UNDER CHAPTER 7 ..... 13

IV. THE ELEVENTH CIRCUIT'S DECISION CONFLICTS WITH DECISIONS OF OTHER CIRCUIT COURTS OF APPEAL ..... 16

V. THE ELEVENTH CIRCUIT'S REASONING WAS FLAWED AND ITS DECISION WAS BASED UPON CASE LAW INAPPOSITE TO THE CASE AT BAR ..... 18

VI. CONCLUSION ..... 20

TABLE OF CONTENTS – Continued

Page

APPENDIX A .....App. 1
APPENDIX B.....App. 3
APPENDIX C.....App. 9
APPENDIX D .....App. 11
APPENDIX E.....App. 13
APPENDIX F.....App. 16
APPENDIX G.....App. 20
APPENDIX H .....App. 36

## TABLE OF AUTHORITIES

Page

CASES

United States Supreme Court

*Fischer v. United States*, 120 S. Ct. 1780 (2000) ..... 5

*Kelly v. Robinson*, 479 U.S. 36 (1986)..... 9

*Miller v. French*, 120 S. Ct. 2246 (2000) ..... 5

*Pioneer Inv. Servs. Co. v. Brunswick Assoc. Limited Partnership*, 507 U.S. 380 (1993) ..... 12, 13, 14

*United States v. Ron Pair Enters., Inc.*, 489 U.S. 235 (1989) ..... 5, 6

*United States Nat'l Bank of Oregon v. Independent Ins. Agents of America, Inc.*, 508 U.S. 439 (1993) ..... 6

United States Court of Appeals

*Cooper v. IRS*, 167 F.3d 857 (4th Cir. 1999)..... 7

*Inglesby et al. v. Moore (In re American Steel Product, Inc.)*, 197 F.3d 1354 (11th Cir. 1999) ..... 6

*Nicholson v. Isaacman (In re Isaacman)*, 26 F.3d 629 (6th Cir. 1994)..... 18, 19, 20

*Taylor v. AGE Credit Union (In re Taylor)*, 3 F.3d 1512 (11th Cir. 1993)..... 6

*In re Themy*, 6 F.3d 688 (10th Cir. 1993) ..... 18, 19, 20

*Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.3d 1428 (9th Cir. 1990)..... 10, 16, 17, 18

United States District Court

*Ford Bus. Forms, Inc. v. Sure Card, Inc.*, 180 B.R. 294 (S.D. Fla. 1994)..... 8, 9, 14

*Schlant v. FDIC (In re P & L Credit and Collection Servs. Inc.)*, 248 B.R. 32 (W.D.N.Y. 2000)..... 8

TABLE OF AUTHORITIES – Continued

Page

United States Bankruptcy Appellate Panel

*Aboody v. United States (In re Aboody)*, 223 B.R. 36 (B.A.P. 1st Cir. 1998).....10, 13

*Dicker v. Dye (In re Edelman)*, 237 B.R. 146 (B.A.P. 9th Cir. 1999).....17

United States Bankruptcy Court

*In re Armstrong*, 238 B.R. 438 (Bankr. E.D. Ark. 1999).....8

*In re Boehm*, 252 B.R. 576 (Bankr. M.D. Fla. 2000) .... 17

*In re Duarte*, 146 B.R. 958 (Bankr. W.D. Tex. 1992) .... 14

*In re Elmont Elec. Co.*, 206 B.R. 41 (Bankr. E.D.N.Y. 1997).....11

*In re Forrester*, 1995 WL 499615 (Bankr. D.N.J. 1994).....11

*In re Glenwood Med. Group, Ltd.*, 211 B.R. 282 (Bankr. N.D. Ill. 1997) .....8

*In re Hamilton*, 179 B.R. 749 (Bankr. S.D. Ga. 1995) .... 11

*In re Jones*, 154 B.R. 816 (Bankr. M.D. Ga. 1993) ..... 11

*In re Kragness*, 82 B.R. 553 (Bankr. D. Or. 1988)..... 8

*In re L. Meyer & Son Seafood Corp.*, 188 B.R. 315 (Bankr. S.D. Fla. 1995).....9, 14

*In re Osman*, 164 B.R. 709 (Bankr. S.D. Ga. 1993) ..... 8

*In re Stalf*, 252 B.R. 168 (Bankr. E.D. Mo. 2000)..... 17

TABLE OF AUTHORITIES – Continued

Page

STATUTES

11 U.S.C. § 726 ..... *passim*

RULES

Fed. R. Bankr. P. 2002 ..... 2

Fed. R. Bankr. P. 3002 ..... *passim*

Fed. R. Bankr. P. 9006 ..... *passim*

Fed. R. Bankr. P. 9010 ..... 2, 20

## PETITION FOR A WRIT OF CERTIORARI

Petitioner Neil C. Gordon, as Trustee for the Estate of Slaughter Company & Associates, Inc., respectfully prays that a Writ of Certiorari issue to review the opinion of the United States Court of Appeals for the Eleventh Circuit, entered in the above-entitled proceeding on July 25, 2000.

## OPINIONS BELOW

The opinion of the Court of Appeals for the Eleventh Circuit is reported at 219 F.3d 1279 and is reprinted in Appendix A hereto. The opinion of the Court of Appeals for the Eleventh Circuit on Petition for Rehearing En Banc has not been reported but is reprinted in Appendix H hereto. The opinion of the United States District Court for the Northern District of Georgia is reported at 251 B.R. 437 and is reprinted in Appendix B hereto. The Judgment of the United States District Court is reprinted in Appendix C hereto. The order of the United States District denying the Trustee's Motion for Reconsideration is reprinted in Appendix D hereto. The decision of the United States Bankruptcy Court for the Northern District of Georgia has not been reported. It is reprinted in Appendix E hereto. The opinion of the United States Bankruptcy Court denying Alcatel's Motion for Reconsideration is reprinted in Appendix F hereto.

## BASIS FOR JURISDICTION

On July 25, 2000, the Eleventh Circuit, *per curiam*, affirmed the decision of the United States District Court for the Northern District of Georgia and allowed a creditor's late-filed proof of claim in a Chapter 7 case to be treated as timely-filed for purposes of distribution under 11 U.S.C. § 726. The Trustee then sought rehearing *en banc*, and the Eleventh Circuit denied this request by order dated September 25, 2000.

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1254(1) to review the order of the Eleventh Circuit.

## STATUTE AND RULES INVOLVED

11 U.S.C. § 726
Fed. R. Bankr. P. 2002
Fed. R. Bankr. P. 3002
Fed. R. Bankr. P. 9006
Fed. R. Bankr. P. 9010

## STATEMENT OF THE CASE

On July 24, 1996, Slaughter Company & Associates, Inc. filed a petition for relief under Chapter 7 of the United States Bankruptcy Code. Neil C. Gordon, Esq. was appointed as the Chapter 7 Trustee. The Chapter 7 case was listed as a "no asset" case, and the Bankruptcy Court notified all creditors that they were not to file a proof of claim unless they were notified to do so.

In its Schedule F, the Debtor listed an undisputed, liquidated, and non-contingent debt owing to Alcatel Contracting (N.A.), Inc. On September 5, 1996, the law firm of Parker, Hudson, Rainer & Dobbs LLP ("Parker Hudson") filed a Notice of Appearance and Request for Notices (the "Request for Notices") as counsel for Alcatel pursuant to Bankruptcy Rules 2002, 9007, and 9010. In the Request for Notices, Parker Hudson requested that notices be sent directly to both Alcatel and Parker Hudson.

On or about February 11, 1998, the Trustee advised the Bankruptcy Court that he anticipated a distribution to the unsecured creditors. Thereafter, on February 12, 1998, the Bankruptcy Court issued a notice to the Debtor's creditors, attached hereto as Appendix G, which set a bar date of May 12, 1998 for filing proofs of claim. The Bankruptcy Court sent a copy of the bar date notice to Alcatel at the address listed both in Alcatel's schedules and in the Request for Notices filed by Alcatel's attorney of record. The Bankruptcy Court did not send a copy of the bar date notice to Parker Hudson.

On June 18, 1998, more than one month after the bar date, Alcatel filed a proof of claim in the amount of $359,010.09. On July 13, 1998, Alcatel filed a motion in the Bankruptcy Court requesting that its untimely-filed proof of claim be treated as timely filed.

On December 10, 1998, the Bankruptcy Court, without a hearing, entered an Order allowing Alcatel to file its proof of claim but denying Alcatel's request that its proof of claim be treated as timely filed. The Bankruptcy Court held that Alcatel's actual knowledge of the Debtor's case

precluded Alcatel's claim from being treated as timely filed for purposes of 11 U.S.C. § 726(a)(2)(C), even though actual notice of the bar date had not been sent to Alcatel's counsel. Alcatel had received notice of the filing of the Chapter 7 case and was present at the § 341 first meeting of creditors held on August 30, 1996.

Alcatel subsequently filed a Motion for Reconsideration on December 21, 1998, which the Bankruptcy Court denied on February 16, 1999. Alcatel then filed a Notice of Appeal of the Bankruptcy Court's Orders in the District Court on February 22, 1999. Alcatel, with the consent of the trustee, filed two Motions for Extension of Time to file its brief, both of which the District Court granted, and Alcatel filed its brief in the District Court on May 11, 1999. Thereafter, on May 27, 1999, the Trustee sought its first and only extension of time in which to file its responsive brief due June 1, 1999, consent for which had also been given by Alcatel, yet the District Court denied the Trustee's Motion without explanation and after the deadline to file the responsive brief had expired.

On September 8, 1999, the District Court entered an Order reversing the Bankruptcy Court's Order and allowing Alcatel's late-filed proof of claim to be treated as timely filed. On September 23, 1999, the Trustee filed a Motion for Reconsideration in the District Court, and the Motion was denied on November 4, 1999.

The Trustee then filed a timely Notice of Appeal in the Court of Appeals of the Eleventh Circuit. After brief and oral argument, the Eleventh Circuit, *per curiam*, affirmed the decision of the District Court on July 25, 2000. The Trustee then filed a Motion for Reconsideration

*en banc*, which the Eleventh Circuit denied on September 25, 2000.

## ALLOWANCE OF THE WRIT

The Eleventh Circuit's opinion disregards and is in conflict with relevant decisions of this Court, of other Circuit Courts of Appeal, and of numerous other lower courts and in contravention of the plain meaning of 11 U.S.C. § 726(a) and Federal Rules of Bankruptcy Procedure 3002 and 9006. Specifically, the Eleventh Circuit, without even a mention of these other cases, statute, and rules, impermissibly held that Alcatel's tardily-filed proof of claim in a Chapter 7 case would be allowed as timely filed, even though Alcatel clearly had knowledge of the bankruptcy case prior to the bar date and did not meet with any of the exceptions set forth in either the Bankruptcy Code or Rules.

## I.

## THE ELEVENTH CIRCUIT'S DECISION CONTRADICTS THE PLAIN MEANING OF 11 U.S.C. § 726 AS SUPPLEMENTED BY RULES 3002(c) AND 9006(b)(3)

Since this Court's decision in *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989), this Court has consistently held that federal statutes, including bankruptcy statutes, should be interpreted according to their plain meaning. *See, e.g., Miller v. French*, 120 S. Ct. 2246, 2248 (2000) (finding that federal statute must be interpreted according to its plain meaning); *Fischer v. United States*,

120 S. Ct. 1780, 1793 (2000) (invalidating argument inconsistent with plain meaning of statute).

In *Ron Pair*, this Court stated: "As long as the statutory scheme is coherent and consistent, there is generally no need for a court to inquire beyond the plain language of the statute." *Ron Pair*, 489 U.S. at 240; *see also United States Nat'l Bank of Oregon v. Independent Ins. Agents of America, Inc.*, 508 U.S. 439, 454 (1993) ("A statute's plain meaning must be enforced, of course, and the meaning of a statute will typically heed the commands of its punctuation."); *Inglesby et al. v. Moore (In re American Steel Product, Inc.)*, 197 F.3d 1354, 1356 (11th Cir. 1999) ("It is well-settled that courts are required to apply the plain meaning canon of statutory construction in interpretation of the Bankruptcy Code."); *Taylor v. AGE Federal Credit Union (In re Taylor)*, 3 F.3d 1512, 1516 (11th Cir. 1993) (holding that plain meaning of 11 U.S.C. § 521(2) requires debtors to redeem, reaffirm, or surrender collateral).

Because the Eleventh Circuit failed to follow the plain meaning of § 726, as is required under the precedent set by this Court when the statute's meaning is clear on its face, the Eleventh Circuit must be reversed.

Pursuant to 11 U.S.C. § 726, which governs the distribution of property of the estate, a creditor's late-filed proof of claim must be given third priority status in order of distribution if that creditor had knowledge of the bankruptcy case. *See* 11 U.S.C. § 726(a)(3). Section 726(a) provides in pertinent part:

> (a) Except as provided in section 510 of this title, property of the estate shall be distributed –

. . .

(2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is –

(A) timely filed under section 501(a) of this title;

(B) timely filed under section 501(b) or 501(c) of this title; or

(C) tardily filed under section 501(a) of this title, if

(i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for filing of a proof of such claim under section 501(a) of this title; and

(ii) proof of such claim is filed in time to permit payment of such claim;

(3) third, in payment of any allowed unsecured claim proof of which is tardily filed under section 501(a) of this title other than a claim of the kind specified in paragraph (2)(C) of this subsection.

This statute is clear. When a creditor has notice or actual knowledge of a bankruptcy case, then, as the Bankruptcy Court correctly held, its late-filed proof of claim must be paid according to the distribution scheme as third priority, after administrative and timely-filed claims. *See, e.g., Cooper v. IRS*, 167 F.3d 857, 858 (4th Cir. 1999) ("The order of payment [under § 726] is usually straightforward: first, priority claims; second, timely general claims and untimely general claims when the creditor *lacked notice of the case*; third, other untimely

claims . . . ") (emphasis added); *Schlant v. FDIC (In re P & L Credit and Collection Servs., Inc.)*, 248 B.R. 32, 35 (W.D.N.Y. 2000) (finding that because creditor had knowledge of the bankruptcy case prior to the claims bar date, "under the plain language of § 726(a)(2), the [creditor's] claim should not have been allowed as a second-level claim under § 726(a)(2)"); *Ford Bus. Forms, Inc. v. Sure Card, Inc.*, 180 B.R. 294, 295 (S.D. Fla. 1994) ("It is significant that the Eleventh Circuit held in *Alton* that constitutional due process requires only notice or actual knowledge *of the bankruptcy case generally;* it does not require notice or actual knowledge of the particular bar date for filing claims.") (emphasis in original); *In re Armstrong*, 238 B.R. 438, 441 (Bankr. E.D. Ark. 1999) (stating that for purposes of distribution according to § 726(a)(2), under both the Bankruptcy Code and Rules, the issue is "whether the claimants had notice of the case, as opposed [sic] specific notice of the bar date"); *In re Glenwood Med. Group, Ltd.*, 211 B.R. 282, 290 (Bankr. N.D. Ill. 1997) (stating that "§ 726(a)(3) accords lower priority to a general unsecured claim filed by a creditor who did have timely notice or knowledge of the bankruptcy but filed late"); *In re Osman*, 164 B.R. 709, 713 (Bankr. S.D. Ga. 1993) ("Section 726(a)(3) on the other hand, penalizes a tardily filing creditor who did receive notice or have actual knowledge of the case by subordinating that creditor one level below that of unsecured creditors."); *In re Kragness*, 82 B.R. 553, 555 (Bankr. D. Or. 1988) ("In short, the operative fact is whether or not the creditor has notice of the debtor's bankruptcy proceeding in time to file a timely proof of claim under § 726 . . . ").

In a bankruptcy court decision out of the Eleventh Circuit factually similar to the case at bar, the court held that because the creditor had notice of the bankruptcy case prior to the deadline for filing proofs of claim, a new bar date would not be set, even though due to a mailing matrix error, the creditor did not receive actual notice of the bar date. *See In re L. Meyer & Son Seafood Corp.*, 188 B.R. 315, 319 (Bankr. S.D. Fla. 1995). In *Meyer*, the court used the wrong mailing matrix when sending out notice of the claims bar date, and the creditor was not included in the matrix and did not receive actual notice of the bar date. *See id.* at 317. The creditor argued that due process requires that creditors must be given actual notice of the bar date, but the court found that under the standard set forth by the court in *Ford Business Forms*, constitutional due process requirements are satisfied if a creditor has actual knowledge of the bankruptcy case prior to the claims bar date. *See id.* at 319.

The statute itself is neither cited nor referenced in either the District Court's opinion or the opinion of the Eleventh Circuit. The Eleventh Circuit's refusal to refer to the statute or to interpret the plain meaning of its language is in direct contravention of *Kelly v. Robinson*, 479 U.S. 36 (1986), wherein this Court found that " 'the starting point in every case involving construction of a statute is the language itself.' " *Id.* at 43 (citing *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 756 (1975)). In *Kelly*, this Court further stated that the language of a statute should be considered in light of the provisions of the law as a whole, as well as the object and policy of the law. *See id.* at 43-44.

The Eleventh Circuit also refused to discuss or to cite the applicable Rules of Bankruptcy Procedure promulgated by this Court, Rules 3002(c) and 9006(b)(3). Rule 3002(c), which governs the time for filing a proof of claim or interest, states that in a Chapter 7 case, a proof of claim is timely filed if it is filed not later than ninety days after the § 341 Meeting of Creditors, except in limited circumstances. Of the five limited circumstances set forth in Rule 3002(c), only one is applicable to the case at bar. Rule 3002(c)(5) states:

> (5) If notice of insufficient assets to pay a dividend was given to creditors pursuant to Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall notify the creditors of that fact and that they may file proofs of claim within 90 days after the mailing of the notice.

Rule 9006(b)(3) states that the court may enlarge the time for taking certain actions, including those actions taken under Rule 3002(c), "only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3).

Under the clear language of the Rules, there are no exceptions to the treatment of a late-filed proof of claim not set forth in Rule 3002(c). The plain language of the statute and the Rules do not allow for any discretion on the part of the bankruptcy court to enlarge the time within which a creditor may file a proof of claim. *See, e.g., Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.3d 1428, 1432 (9th Cir. 1990) (stating that "the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect"); *Aboody v. United States*

*(In re Aboody)*, 223 B.R. 36, 37-38 (B.A.P. 1st Cir. 1998) ("Although the court can generally permit actions based on excusable neglect under Fed. R. Bankr. P. 9006(b)(1), pursuant to Fed. R. Bankr. P. 9006(b)(3), the court's discretion to enlarge the time to file a proof of claim in a Chapter 13 is limited to the conditions in Rule 3002."); *In re Elmont Elec. Co.*, 206 B.R. 41, 43 (Bankr. E.D.N.Y. 1997) ("By the express words of Bankruptcy Rule 9006(b)(3), the Court may not enlarge that time period [for filing a proof of claim]."); *In re Hamilton*, 179 B.R. 749, 755 (Bankr. S.D. Ga. 1995) ("The six enumerated exceptions contained in Bankruptcy Rule 3002(c) are the exclusive means available to a creditor with notice of the bankruptcy proceedings to file a late proof of claim."); *In re Forrester*, 1995 WL 499615 (Bankr. D.N.J. 1994) ("Thus, the deadline for a creditor to file a proof of claim in a Chapter 7 liquidation is valid and enforceable; the court lacks the discretion to extend the deadline once it has passed."); *In re Jones*, 154 B.R. 816, 818 (Bankr. M.D. Ga. 1993) ("The time for filing proofs of claim in a Chapter 7 or Chapter 13 case can be extended only for the six reasons set forth in Rule 3002(c).").

It is undisputed that the Bankruptcy Court sent written notice of the bar date for filing proofs of claim to Alcatel at the address provided both by the Debtor on its schedules and by Alcatel's attorneys in the Request for Notices.

There is no provision in the Bankruptcy Code or Rules which would allow Alcatel's late-filed proof of claim to be treated as timely filed. Alcatel does not meet any of the specific situations set forth in Bankruptcy Rule

3002(c), and under Rule 9006(b)(3), those situations listed in Rule 3002(c) are the only exceptions.

Petitioner urges this Court to apply the plain meaning of § 726 and Rules 3002(c) and 9006(b)(3) and to hold that there is no basis to permit a late-filed proof of claim to be treated as timely filed, other than those grounds specifically set forth in the Bankruptcy Code and Rules, and that bankruptcy courts have no equitable jurisdiction to enlarge the time during which a proof of claim may be deemed timely filed.

## II.

## THE ELEVENTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S DECISION IN *PIONEER*

This Court, in *Pioneer Investment Services Co. v. Brunswick Assoc. Limited Partnership*, 507 U.S. 380 (1993), held that a party's failure to file its proof of claim before the claims bar date may constitute "excusable neglect," but that the doctrine of "excusable neglect" applies only in the context of a Chapter 11 proceeding. *See id.* at 388-89 ("The 'excusable neglect' standard of Rule 9006(b)(1) governs late filings of proofs of claim in Chapter 11 cases but not in Chapter 7 cases."); *see also id.* at 389 n.4 ("Such filings [of proofs of claim in Chapter 7 cases] are governed exclusively by Rule 3002(c).").

In *Pioneer*, this Court reasoned that the differences between the policies behind Chapters 11 and 7 dictate the different treatment of late-filed proofs of claim. According to this Court's analysis, because the purpose behind a

case filed under Chapter 11 is to reorganize and rehabilitate the debtor, "the bankruptcy courts are necessarily entrusted with broad equitable powers to balance the interests of the affected parties, guided by the overriding goal of ensuring the success of the reorganization." *Id.* at 389. This Court noted that by contrast, the goal of a Chapter 7 liquidation is "the prompt closure and distribution of the debtor's estate. . . . " *Id.; accord Aboody v. United States (In re Aboody)*, 223 B.R. 36, 38-39 (B.A.P. 1st Cir. 1998) ("The purpose behind the claims bar date in bankruptcy, as in the case before us, is 'to provide the debtor and its creditors with finality' and to 'insure the swift distribution' of the liquidated estate.") (citations omitted).

The Eleventh Circuit's decision in this case is in direct contravention to this Court's holding in *Pioneer*. By holding, in effect, that a bankruptcy court may, under its equitable powers, enlarge the time for filing a proof of claim in a Chapter 7 case, the Eleventh Circuit circumvented this Court's holding in *Pioneer* and set a dangerous precedent with respect to a trustee's ability to administer an estate effectively.

## III.

## THE ELEVENTH CIRCUIT'S DECISION CONTRADICTS THE POLICY BEHIND AN EFFECTIVE LIQUIDATION UNDER CHAPTER 7

As this Court reasoned in *Pioneer*, there are differing policies furthered by Chapter 11 cases and Chapter 7 cases. The ultimate goal of a Chapter 7 case is an efficient liquidation of the debtor's estate, and a fluid deadline for

the filing of proofs of claim disturbs this goal. As the court noted in *In re Duarte*, 146 B.R. 958 (Bankr. W.D. Tex. 1992), when it refused to apply an excusable neglect standard in the context of a Chapter 13 case:

> A hard and fast deadline for creditor's claims has its roots not in equity but in the necessity for prompt and efficient administration of the case; untimely creditor claims simply undermine the distribution process. As it is, Rule 3002(c) does contain a few equitable exceptions, but an "exception" permitting late claims for "excusable neglect" would quickly swallow the rule, imposing an administrative cost on chapter 7 and chapter 13 cases directly contrary to the goal of "just, speedy and inexpensive determination of cases" and their "expeditious and efficient administration," said to be the chief purpose of the bankruptcy laws.

*Id.* at 962; *see also Ford Bus. Forms, Inc. v. Sure Card, Inc.*, 180 B.R. 294, 297 (S.D. Fla. 1994) (citing *Pioneer* and finding that "in Chapter 7 cases . . . finality is important because the goal of a Chapter 7 case is to close and distribute a debtor's estate promptly"); *In re L. Meyer & Son Seafood Corp.*, 188 B.R. 315, 318 (Bankr. S.D. Fla. 1995) (distinguishing Chapter 11 cases from Chapter 7 cases based upon the fact that "the statutory language and policies are different" between the two chapters).

Congress clearly intended to promote finality in the context of Chapter 7 cases, and to allow a creditor to file a proof of claim after the bar date, when that creditor obviously had knowledge of the case prior to the bar date for filing proofs of claim, violates both this policy and the plain language of § 726. Had Congress intended to create

an exception to the bar date for creditors with actual knowledge of the case but whose attorney did not receive notice of the bar date, Congress could have done so. However, Congress clearly intended, in § 726, that once a creditor has actual knowledge of the bankruptcy case, that creditor must act promptly to protect its interests. For the Eleventh Circuit to hold otherwise undermines this intent.

The Eleventh Circuit's allowance of a clerk's office matrix mailing error to create an otherwise unrecognized exception to the clear Congressional intent behind § 726 and that section's plain meaning places an unreasonable burden upon Chapter 7 trustees in administering the assets of an estate. Clearly, a creditor with knowledge of a bankruptcy case is in a better position and has more incentive to monitor the bankruptcy case and to ensure that the creditor's interests are protected. A diligent creditor would do more than simply file a Request for Notices with the bankruptcy court and then sit back to await further word from the court before acting upon its claim. By sanctioning this type of behavior, the Eleventh Circuit has placed the burden upon the Chapter 7 trustee, and not the creditor, to monitor the clerk's office matrix to ensure that proper notice is being sent to the appropriate parties in order for the trustee to avoid liability in administering the assets of the estate.

The Congressional policy behind Chapter 7 cases would better be served by the application of the clear

language of § 726 and the reversal of the Eleventh Circuit's decision to allow a late-filed proof of claim to be treated as timely filed under no express authority in the Bankruptcy Code or Rules.

## IV.

## THE ELEVENTH CIRCUIT'S DECISION CONFLICTS WITH DECISIONS OF OTHER CIRCUIT COURTS OF APPEAL

The Eleventh Circuit's decision to allow Alcatel's late-filed proof of claim to be treated as timely filed, presumably under the court's equitable power, creates a split in authority among the Circuit Courts of Appeal, which have held that courts may not enlarge the time for filing proofs of claim unless one of the five exceptions listed in Rule 3002(c) exists.

In *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428 (9th Cir. 1990), an unsecured creditor in a Chapter 7 case did not receive written notice of the bar date for filing proofs of claim. The creditor filed a motion for enlargement of time to file his proof of claim based upon his failure to receive actual notice of the claims bar date, but the bankruptcy court held that the creditor failed to show that he fit within any of the exceptions set forth in Bankruptcy Rule 3002(c) and was entitled to third-tier distribution under 11 U.S.C. § 726(a)(3). *See id.* at 1429-30.

This decision was affirmed by both the district court and the Ninth Circuit. The Ninth Circuit rejected the creditor's argument that his due process rights had been violated and held that the creditor "actually received

information about the bankruptcy proceedings that was sufficient to put it on inquiry notice." *Id.* at 1431.

The Ninth Circuit also rejected the creditor's argument that the court could use its equitable powers to enlarge the time for filing a proof of claim. *See id.* at 1432. In so rejecting this argument, the Ninth Circuit applied the plain language of Rule 9006(b), which "plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c)." *Id.; see also id.* at 1434 (citing to the legislative history of § 726 and holding that "if a creditor knows of the bankruptcy, it does not qualify for relief under § 726").

Virtually all courts have held that bankruptcy judges have no discretion to allow a late-filed proof of claim to be treated as timely filed absent one of the exceptions set forth in Rule 3002(c) as supplemented by Rule 9006(b)(3). *See, e.g., Dicker v. Dye (In re Edelman)*, 237 B.R. 146, 152-53 (B.A.P. 9th Cir. 1999) (finding that the rule as set forth in *Coastal Alaska* is "that no source of discretion exists – neither equitable jurisdiction, nor § 105, nor anything else – and a source is not created even if a good reason is presented for why a source should exist"); *In re Boehm*, 252 B.R. 576, 578 (Bankr. M.D. Fla. 2000) ("The bankruptcy court does not have equitable discretion to extend the deadline for the filing of an untimely claim when none of the exceptions expressly provided in Rule 3002(c) exist and excusable neglect is not one of the exceptions."); *In re Stalf*, 252 B.R. 168, 169 (Bankr. E.D. Mo. 2000) ("The Court may enlarge the time for taking action under Rule 3002(c) only to the extent and under the conditions stated therein.").

There is now a split of authority among the circuits because the decision by the Eleventh Circuit to allow a late-filed proof of claim to be deemed timely filed even though the creditor had actual knowledge of the case prior to the bar date conflicts with the Ninth Circuit's decision in *Coastal Alaska* and the lower courts throughout the country, including within the Eleventh Circuit itself.

## V.

## THE ELEVENTH CIRCUIT'S REASONING WAS FLAWED AND ITS DECISION WAS BASED UPON CASE LAW INAPPOSITE TO THE CASE AT BAR

The Eleventh Circuit's opinion refers to the "thorough and well reasoned" order of the District Court. The District Court's reasoning, adopted by the Eleventh Circuit when it affirmed the District Court, was flawed for several reasons. Not only did the court refuse to discuss the applicable case law, but it failed even to mention or interpret the very Bankruptcy Code sections and Rules at issue, relying instead upon case law which does not support the court's ultimate conclusion.

The court cites *Nicholson v. Isaacman (In re Isaacman)*, 26 F.3d 629 (6th Cir. 1994) and *In re Themy*, 6 F.3d 688 (10th Cir. 1993) for the proposition that creditors are entitled to rely on the Bankruptcy Court clerk. In *Isaacman*, the court held that if the bankruptcy court sets a bar date for filing non-dischargeability complaints and a creditor reasonably relies upon that bar date, the bankruptcy court should allow all complaints filed before the bar date to proceed. *See Isaacman*, 26 F.3d at 632. The

court found that creditors are entitled to rely on the information supplied by the bankruptcy court, and that if the court issues erroneous information as to a bar date and a creditor relies upon the erroneous date, that court should exercise its equitable powers to prevent the injustice that would result from not enforcing the bar date. *See id.* The cases cited by the court in *Isaacman* all concerned situations in which the bankruptcy clerk's office set an erroneous bar date, upon which the courts found that creditors were entitled to rely. *See id.* at 632-33.

In *Themy*, the bankruptcy court issued a bar date notice for non-dischargeability complaints and complaints objecting to discharge, which notice contained the wrong date. *See Themy*, 6 F.3d at 689. A creditor, in reliance upon the erroneous bar date, filed a complaint objecting to discharge and a non-dischargeability complaint. *See id.* The court found that bankruptcy courts may act under their equitable powers to correct a court mistake where an incorrect deadline has been set. *See id.* at 690 (stating that courts should correct their own mistakes when the court "affirmatively misleads the creditor as to a deadline . . . ").

*Isaacman* and *Themy* are distinguishable on their facts, and both cases are inapposite to the case at bar. Neither *Isaacman* nor *Themy* concerned the deadline for filing a proof of claim, and in both cases, the bankruptcy court clerk's office erred in setting an incorrect deadline. Under the reasoning of both cases, because the clerk's office affirmatively set forth an erroneous bar date, the court could, under its equitable powers, correct its own affirmative mistake.

Under the facts of the case at bar, the bankruptcy court clerk's office did not set forth an incorrect deadline

for filing proofs of claim upon which creditors relied in filing their claims. Therefore, the injustice that the courts in *Isaacman* and *Themy* attempted to correct is not present under these facts. Moreover, creditors routinely have extended the bar date for objecting to discharge by simply filing a motion with the court requesting same; whereas, there is no corresponding procedure to have a Chapter 7 claims bar date extended. This further dramatizes the inapplicability of the cases relied upon by the Eleventh Circuit.

## VI.

## CONCLUSION

Petitioner urges this Court to issue a writ of certiorari to review the decision of the Eleventh Circuit because the decision is in conflict with another Circuit Court of Appeal and with a prior decision of this Court, and the policy ramifications of the decision set a dangerous precedent with respect to a Chapter 7 trustee's ability to administer an estate effectively. The Eleventh Circuit disregarded the plain meaning of 11 U.S.C. § 726 and Bankruptcy Rules 3002 and 9006 and impermissibly allowed Bankruptcy Rule 9010 to render the language and Congressional intent of § 726 meaningless. Accordingly, the Eleventh Circuit must be reversed.

Respectfully submitted,

NEIL C. GORDON, ESQ.
MACEY, WILENSKY, COHEN,
WITTNER & KESSLER
Suite 600, Marquis Two Tower
285 Peachtree Center Avenue, N.E.
Atlanta, Georgia 30303

## APPENDIX A

United States Court of Appeals,
Eleventh Circuit.

**In re: SLAUGTHER COMPANY & ASSOCIATES, Debtor.**

**Alcatel Contracting (NA), Inc.,
Plaintiff-Appellee,**

**v.**

**Neil C. Gordon, Trustee-Appellant.**

**No. 99-15093.**

July 25, 2000.

Louis G. McBryan, Atlanta, GA, for Trustee-Appellant.

Jack C. Basham, Jr., James R. Rankin, Jr., Parker, Hudson, Rainer & Dobbs, LLP, Atlanta, GA, for Plaintiff-Appellee.

Appeal from the United States District Court for the Northern District of Georgia (No. 99-00741-CV-GET-1); G. Ernest Tidwell, Judge.

Before TJOFLAT and HULL, Circuit Judges, and PROPST*, District Judge.

PER CURIAM:

After review and oral argument, we affirm in full the judgment of the district court which reversed the bankruptcy court's denial of Appellant Alcatel's motion to have its proof of claim treated as timely filed.

---

* Honorable Robert B. Propst, U.S. District Judge for the Northern District of Alabama, sitting by designation.

The judgment of the district court is correct for the reasons set out in the district court's thorough and well-reasoned order, dated September 8, 1999.

AFFIRMED.

## APPENDIX B

United States District Court,
N.D. Georgia,
Atlanta Division.

**ALCATEL CONTRACTING (NA), INC.,**
**Appellant,**

**v.**

**SLAUGHTER COMPANY & ASSOCIATES,**
**Appellee/Debtor.**
**Neil C. Gordon Trustee.**

**No. CIV.A.1:99-CV-741-GET.**

Sept. 8, 1999.

Jack Calhoun Basham, Jr., Parker Hudson Rainer & Dobbs, Atlanta, GA, for Alcatel Contracting (NA), Inc., Appellants.

James C. West, III, Office of James C. West, III, Decatur, GA, for Slaughter Company & Associates, Appellees.

Neil C. Gordon, Macey Wilensky Cohen Wittmer & Kessler, Atlanta, GA, for Neil C. Gordon, Trustee.

### ORDER

G. ERNEST TIDWELL, Chief Judge.

The above-styled matter is presently before the court on appeal from the Bankruptcy Court's orders entered on December 10, 1998 and February 16, 1999. Appellant, Alcatel Contracting (NA), Inc. ("Alcatel") raises the following issues on appeal:

1) Whether the Bankruptcy Court erred in denying Alcatel's motion to treat its late-filed proof of claim against the Debtor Slaughter Company & Associates as timely, and in denying Alcatel's motion to reconsider the Bankruptcy Court's decision, when Alcatel was entitled to but did not receive notice of the bar date due to the Bankruptcy Court's error in failing to add Alcatel's counsel to the mailing matrix; and

2) Whether Section 726(a) of the Bankruptcy Code, as applied to the circumstances of this case or on its face, violates Alcatel's constitutional right to due process and is unconstitutionally overbroad.

## Standard of Review

The district court has jurisdiction over this appeal pursuant to 28 U.S.C. § 158. Under Federal Rule of Bankruptcy Procedure 8013, findings of fact shall not be set aside unless "clearly erroneous" and conclusions of law are reviewed de novo. *In re Das A. Borden & Co.*, 131 F.3d 1459, 1462 (11th Cir.1997). Trustee Neil C. Gordon's motion to extend time to file a response brief was denied by this court on June 7, 1999 and the response will not be considered on appeal.

## Factual and Procedural Background

The essential facts are undisputed. On July 24, 1996, the debtor, Slaughter Company & Associates ("Debtor"), filed a petition for relief under Chapter 7 of the United States Bankruptcy Code. Neil C, Gordon, Esq., was appointed as Trustee ("Trustee") for the Debtor. Alcatel is an unsecured creditor of the Debtor. In the Schedule F

filed by the Debtor with the Bankruptcy Court listing its unsecured creditors, Alcatel is listed as having an undisputed, liquidated and non-contingent claim. The Debtor's Chapter 7 bankruptcy case was designated as a "no assets" case and the Bankruptcy Court advised all creditors as follows: "DO NOT FILE A PROOF OF CLAIM UNLESS YOU RECEIVE A COURT NOTICE TO DO SO."

On September 5, 1996, the law firm of Parker, Hudson Rainer & Dobbs ("Parker Hudson") filed a Notice of Appearance and Request for Notices ("Request for Notices") as counsel for Alcatel pursuant to Bankruptcy Rules 2002, 9007 and 9010. The Request for Notices directs the Bankruptcy Court to send all notices to Parker Hudson and gives the mailing address for the firm. The Request for Notices also includes Alcatel's mailing address as: 2001 Westside Parkway, Suite 190, Alpharetta, Georgia 30201.

On or about February 11, 1998, the Trustee advised the Bankruptcy Court that there might be assets available for distribution to the Debtor's unsecured creditors and on February 12, 1998, the Bankruptcy Court issued a notice to the Debtor's creditors instructing them to file proofs of claim by May 12, 1998 (the "Bar Date Notice"). It is undisputed that the Bankruptcy Court did not send a copy of the Bar Date Notice to Parker Hudson and that Parker Hudson did not receive notice of the bar date. Although Alcatel's Westside Parkway address was listed on the Certificate of Service for the Bar Date Notice, Alcatel had moved to a different address prior to the mailing of the notices and therefore, did not receive the Bar Date Notice.

Upon learning of the Bar Date Notice, Parker Hudson notified the Trustee of Alcatel's claim and its failure to receive the Bar Date Notice. On June 18, 1998, Alcatel filed a proof of claim against the Debtor in the Amount of $359,010.09. On July 13, 1998, Alcatel filed its motion in the Bankruptcy Court requesting that its proof of claim be treated as a timely filed claim.

On December 10, 1998, the Bankruptcy Court entered an order allowing Alcatel to file a proof of claim but denying Alcatel's request that the claim be treated as timely filed. In so doing, the court relied on *Byrd v. Alton*, 837 F.2d 457 (11th Cir.1988) for the proposition that lack of actual notice of the claims' bar date does not provide grounds for excusing failure to timely file a proof of claim where the creditor has actual knowledge of the bankruptcy case. As a result of the Bankruptcy Court's action, Alcatel does not have a priority claim and will receive distribution of any property of the estate remaining after payment of timely filed claims pursuant to 11 U.S.C. § 726(a)(3). On February 16, 1999, the Bankruptcy Court denied Alcatel's Motion for Reconsideration.

## Discussion

Rule 9010 of the Bankruptcy Rules authorizes a creditor to appear in a bankruptcy case through an attorney and have the attorney act on its behalf. Rule 2002(g) specifically requires that "[a]ll Notices required to be mailed under this rule to a creditor . . . shall be addressed as such entity or an authorized agent may direct in a filed request. . . . " Bankruptcy Rule 2002(g) (emphasis added). Parker Hudson filed the Request for Notices with the

Bankruptcy Court approximately 18 months before the Bar Date Notice was issued. The Request for Notices specifically directed the Bankruptcy Court to send all notices to Parker Hudson. Therefore, the Bankruptcy Court had an affirmative duty to send notice of the Bar Date to Parker Hudson on behalf of Alcatel. Bankruptcy Rule 2002(g); *See In re Melvin*, 1990 WL 375159 (Bankr.S.D.Ga. October 18, 1990) (vacating Chapter 13 confirmation order where debtor did not give notice to creditor's attorney after attorney made appearance of record even though the creditor received actual notice).

The *Byrd* case cited by the Bankruptcy Court is distinguishable and does not support the action taken by the Bankruptcy Court in this case. In *Byrd*, the Eleventh Circuit specifically found that the Bankruptcy Court had fulfilled its statutory duty to provide notice to all known creditors. *Byrd*, 837 F.2d at 460. In the present action, it is undisputed that, despite a Notice of Appearance and Request for Notices filed in the Bankruptcy Court by Parker Hudson on behalf of Alcatel, no Bar Date Notice was sent to Parker Hudson. Furthermore, because the Bankruptcy Court specifically directed the creditors not to file a proof of claim "unless you receive a court notice to do so," this was not a case where the creditor could independently determine the Bar Date by referring to the Bankruptcy Code or Bankruptcy Rules.

A creditor is entitled to rely on the Bankruptcy Court clerk. *In re Isaacman*, 26 F.3d 629, 632-634 (6th Cir.1994); *In re Themy*, 6 F.3d 688, 689 (10th Cir.1993). Once the Request for Notice was filed, Parker Hudson was entitled to receive the Bar Date Notice. *In re Lomas Financial Corporation*, 212 B.R. 46 (Bankr.D.Del.1997) (creditor denied due

process when debtor failed to give creditor's attorney notice of hearing after attorney filed notice of appearance under Bankruptcy Rule 9010). Therefore, the Bankruptcy Court erred in refusing to treat Alcatel's proof of claim as timely filed when notice of the Bar Date was not sent to Alcatel's counsel as requested.

Furthermore, it is within the Bankruptcy Court's power to correct such errors. A bankruptcy court has the inherent equitable power to correct its own mistakes. *See* e.g., *In re Isaacman*, 26 F.3d at 633 (bankruptcy court should exercise its equitable powers to allow late-filed non-dischargeability complaint when creditor reasonably relied on bankruptcy court's erroneous statement of the bar date). *In re Kelton Motors, Inc.*, 135 B.R. 758 (D.Vt.1991) (creditor had right to receive notice of bar date even though creditor aware of bankruptcy case, therefore late claim treated as timely).

For the foregoing reasons, the judgment of the Bankruptcy Court denying appellant Alcatel's motion to have its late-filed notice of claim treated as timely filed is REVERSED. Because the court finds that the Bankruptcy Court erred in denying Alcatel's motion, this court does not reach the second issue presented by appellant regarding the constitutionality of Section 726(a) of the Bankruptcy Code.

## Summary

The judgment of the Bankruptcy Court in the December 10, 1998 and February 16, 1999 Orders is REVERSED. The case is REMANDED for further proceedings consistent with this opinion.

## APPENDIX C

## UNITED STATES DISTRICT COURT
## NORTHERN DISTRICT OF GEORGIA
## ATLANTA DIVISION

| | | |
|---|---|---|
| ALCATEL CONTRACTING (NA), INC., | ) | BANKRUPTCY CASE NO. 96-71325-MHM |
| Appellant, | ) | ADVERSARY NO. |
| v. | ) | CIVIL ACTION FILE NO. 1:99-cv-741-GET |
| SLAUGTER COMPANY & ASSOCIATES, | ) | |
| Appellee/Debtor, | ) | |
| NEIL C. GORDON, | ) | |
| Trustee | ) | |

## JUDGMENT

This action having come before the court, Honorable G. Ernest Tidwell, United States District Judge, for consideration of the appeal of the bankruptcy judgment in the orders entered 12/10/98 & 2/16/99, and the court having rendered its decision, it is

**Ordered and Adjudged** that the judgment of the bankruptcy court is **reversed**, the case is **remanded** for further proceedings, and the appeal is **dismissed.**

Dated at Atlanta, Georgia this 9th day of September, 1999.

LUTHER D. THOMAS
CLERK OF COURT

By: /s/ Pamela Wright
Deputy Clerk

Prepared, Filed, and Entered
in the Clerk's Office
September 9, 1999
Luther D. Thomas
Clerk of Court

By: /s/ Pamela Wright
Deputy Clerk

## APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

| | | |
|---|---|---|
| ALCATEL CONTRACTING, (NA), INC., Appellant, | ) | |
| v. | ) | CIVIL ACTION |
| SLAUGHTER COMPANY & ASSOCIATES, Appellee/Debtor. | ) | NO. 1:99-cv-741-GET |
| NEIL C. GORDON, Trustee. | ) | |

**ORDER**

The above-styled matter is presently before the court on the motion by Trustee Neil C. Gordon for reconsideration of this court's September 8, 1999 Order [docket no. 14].

A motion for reconsideration should be filed only when, after careful consideration, it is deemed "absolutely necessary" by the movant. LR 7.2E, NDGa. Such a motion may not be employed as a vehicle to tender new legal theories or to introduce new evidence that could have been presented in conjunction with the previously filed motion or response. Rather, motions for reconsideration serve the limited purpose of correcting manifest errors of law or fact, or in certain instances, calling newly

discovered evidence to the court's attention. Thus, the court is willing to reconsider a prior ruling on an issue in the face of new mandatory authority.

After considering the Trustee Neil C. Gordon's motion for reconsideration, the court adheres to the ruling set forth in its September 8, 1999 Order [docket no. 12]. Therefore, Trustee Neil C. Gordon's motion for reconsideration [docket no. 14] is DENIED.

Summary

The motion by Trustee Neil C. Gordon for reconsideration of this court's September 8, 1999 Order [docket no. 14] is DENIED.

SO ORDERED, this 4 day of November, 1999.

/s/ C. Ernest Tidwell
C. ERNEST TIDWELL,
JUDGE
UNITED STATES DISTRICT
JUDGE

## APPENDIX E

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

| | | |
|---|---|---|
| IN RE: | ) | CHAPTER 7 |
| SLAUGHTER COMPANY & ASSOCIATES, | ) | CASE NO. 96-71325 |
| Debtor. | ) | |

### ORDER

Alcatel Contracting (NA), Inc. ("Alcatel") filed a motion "To File Proof of Unsecured Claim After Bar Date." This Bankruptcy case was filed as a no-asset case. When assets became available for distribution to creditors, Trustee requested a notice to creditors to file claims. That notice, advising creditors of the May 12, 1998 bar date for filing proofs of claim, was mailed to the address in the record for Alcatel. Alcatel's address, however, had changed and, therefore, the address to which the notice was mailed was incorrect. Additionally, the notice was not sent to Alcatel's attorneys, who had filed a notice of appearance for Alcatel. As a result, Alcatel did not learn of the bar date for filing proofs of claim until June 2, 1998.

Permission of this court to *file* a proof of claim, tardily or otherwise, is unnecessary. *See*, 11 U.S.C. §502(a). *See also, In re Good*, Case No. 94-76219 (Bankr. N.D.Ga., November 21, 1996). Additionally, unless an objection to Creditor's claim is filed, the claim will be deemed allowed as filed. *Id.*

The record shows that no objection to Alcatel's claim has been filed. Section 726 sets forth priority of distribution of assets in a Chapter 7 case. Because Alcatel had actual notice of Debtor's bankruptcy case, Alcatel's tardily-filed claim is entitled to the treatment set forth in 11 U.S.C. §726(a)(3), i.e. Alcatel will receive distribution of any property of the estate remaining after payment of all priority claims and all timely-filed or deemed-timely-filed claims.

As a practical matter, it is unlikely in the instant case that the timely-filed claims will be paid in full. Therefore, the intent of Alcatel's motion appears to be extension of the claims bar date to permit Alcatel's claim to receive treatment as a timely-filed claim. This court cannot, however, grant such an extension. Because Alcatel had actual notice of the filing of Debtor's *case*, the lack of actual notice of the claims bar date does not provide grounds for excusing Alcatel's failure to timely file a proof of claim. *See, Byrd v. Alton*, 837 F. 2d 457 (11th Cir. 1988); *Ford Business Forms, Inc. v. Sure Card, Inc.*, 180 B.R. 294 (S.D. Fla. 1994). Therefore, because permission to *file* a late claim is unnecessary and because this court cannot grant an extension of the claims bar date to permit timely filing of Alcatel's claim, it is hereby

ORDERED that the Motion of Alcatel Contracting (NA), Inc. To File Proof of Unsecured Claim After Bar Date is denied in part and granted in part: granted to the extent that Alcatel may file the claim, but denied to the extent it seeks such filing to be deemed timely.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor, Debtor's attorney, Creditor, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the 9th day of December, 1998.

/s/ Margaret H. Murphy
MARGARET H. MURPHY
UNITED STATES
BANKRUPTCY JUDGE

## APPENDIX F

## UNITED STATES BANKRUPTCY COURT
## NORTHERN DISTRICT OF GEORGIA
## ATLANTA DIVISION

| | | |
|---|---|---|
| IN RE: | ) | |
| SLAUGHTER COMPANY & ASSOCIATES, | ) | CHAPTER 7 |
| | ) | CASE NO. 96-71325 |
| Debtor | ) | |

## ORDER

By order entered December 10, 1998 (the "Order"), the motion of Alcatel Contracting (NA), Inc. ("Alcatel") "To File Proof of Unsecured Claim After Bar Date" was denied. Alcatel has filed a motion for reconsideration.

This bankruptcy case was filed as a no-asset case. Shortly after the case was filed, Alcatel filed a Request for Notices, providing the address for Alcatel's attorney and for Alcatel. When assets became available for distribution to creditors, Trustee requested a notice to creditors to file claims. That notice, advising creditors of the May 12, 1998 bar date for filing proofs of claim, was mailed to the address in the record for Alcatel but not to Alcatel's attorney. Alcatel's address, however, had changed and, therefore, the address to which the notice was mailed was incorrect. Alcatel had not filed a notice of its change of address with this court. As a result, Alcatel did not learn of the bar date for filing proofs of claim until June 2, 1998.

The Order denied Alcatel's request to treat its late-filed proof of claim as timely filed and entitled to distribution *pro rata* with other timely filed claims. Based

upon the principles set forth in *Byrd v. Alton*, 837 F.2d 457 (11th Cir. 1988); *Ford Business Forms, Inc. v. Sure Card, Inc.*, 180 B.R. 294 (S.D.Fla. 1994), this court concluded that, because Alcatel had actual notice of Debtor's bankruptcy case, Alcatel's tardily-filed claim is entitled to the treatment set forth in 11 U.S.C. § 726(a)(3), i.e. Alcatel will receive distribution of any property of the estate remaining after payment of all priority claims and all timely-filed or deemed-timely-filed claims. Additionally, although the Bankruptcy Clerk erroneously failed to serve Alcatel's attorney with the notice of the bar date for filing proofs of claim, Alcatel *was* served at the address last provided to the court.

Motions for reconsideration are addressed in BLR 9023-1, which provides:

> Motions for reconsideration shall not be filed as a matter of routine practice. Whenever a party or attorney for a party believes it is absolutely necessary to file a motion to reconsider an order or judgment, the motion shall be filed with the Clerk of Court within 10 days after entry of the order or judgment. Responses shall be filed not later than ten days after service of the motion. Parties and attorneys for the parties shall not file motions to reconsider the Court's denial of a prior motion for reconsideration.

Motions filed pursuant to Bankruptcy Rule 9023 to alter or amend judgments must be served within ten days after entry of judgment. Alcatel's motion for reconsideration was filed eleven days after entry of the Order. Therefore, it was not timely filed.

Pursuant to Bankruptcy Rule 9024, a movant may seek relief from a judgment or order if the motion is filed within a reasonable time. A movant may obtain such relief from a judgment or order for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under [Bankruptcy] Rule [9023];

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(6) any other reason justifying relief from the operation of the judgment.

A motion for reconsideration is not intended to be used as a vehicle to tender new legal theories or introduce new evidence that could have been presented in conjunction with the original motion. *In re Freeman*, Civil Action No. 1:88-CV-1320-JTC (N.D.Ga. June 21, 1989). "Motions for reconsideration serve the limited purpose of correcting manifest errors of law or fact or, in certain instances calling newly discovered evidence to the Court's attention." *Id.* at page 2.

Alcatel's motion for reconsideration does not set forth any newly discovered evidence. Alcatel presents legal arguments which it could have presented in conjunction with the original motion. Principally, Alcatel argues that denial of its request to treat its claim as timely filed will deprive Alcatel of constitutional due process. Alcatel does not cite any Eleventh Circuit or U.S. Supreme Court law which would contradict the principles in [sic] set forth in *Alton v. Byrd. See also, Volpe v. Sadeghy*, Civil No. 1:95-cv-3212-JEC (N.D.Ga., April 30, 1998). Bankruptcy Rule 9006(b)(3) reflects the firm Congressional intent that the bankruptcy court possesses extremely limited power to extend the deadlines in Bankruptcy Rule 3002(c). Accordingly, it is hereby

**ORDERED** that Alcatel's motion for reconsideration is denied.

**The Clerk, U.S. Bankruptcy Court, is directed to serve** a copy of this order upon Debtor's attorney, Creditor, Creditor's attorneys and the Chapter 7 Trustee.

IT IS SO ORDERED, this the 12th day of February, 1999.

/s/ M.H. Murphy
MARGARET H. MURPHY
UNITED STATES BANKRUPTCY
JUDGE

**APPENDIX G**

**UNITED STATE [sic] BANKRUPTCY COURT**
**Northern District of Georgia (Atlanta)**

IN RE: CASE NO: 96-71325
Slaughter Company & Associates, mhm
58-1567790

2964 Ember Drive
Decatur, GA 30032

*** * * NOTICE FIXING TIME FOR * * ***
**FILING PROOFS OF CLAIM**

You were previously notified that the schedule of the Debtor(s) disclosed no assets available for distribution to creditors. The Trustee now reports that funds may be available for distribution.

Therefore, you are hereby notified that, if you wish to participate in any distribution which may be paid from the estate, you must file a proof of claim on or before;

05/12/98

**If you have already filed your proof of claim, it is unnecessary to refile.**

Dated: 2/12/98

For the Court
W. Yvonne Evans
Clerk

File with:
Clerk of Court
Northern District of Georgia
Atlanta Division
1340 Russell Federal Bldg
75 Spring Street, SW
Atlanta, GA 30303

**TRACOR**

11400 Commerce Park Drive
Reston, Virginia 22091-1506

**CERTIFICATE OF SERVICE**

District/off: 113e-1 User: hunter Page 1, 2, 3 of 3
Date Rcvd:
Feb 12, 1998

Case: 96-71325 Form ID: poc Total Served: 178

The following entities were served by first class mail on Feb 14, 1998.

| | |
|---|---|
| db | Slaughter Company & Associates, 2964 Ember Drive, Decatur, GA 30032 |
| aty | James C. West, III, Suite 246, 246 Sycamore Street, Decatur, GA 30030-3328 |
| tr | Neil C. Gordon, Macey, Wilensky, Cohen, Wittner, etal, Suite 600, Marquis Two Tower, 285 Peachtree Center, NE, Atlanta, GA 30303-1229 |
| ust | C. David Butler, Office of the US Trustee, Room 362, Richard B Russell Bldg, 75 Spring Street SW, Atlanta, GA 30303 |
| 1637445 | AAA SIGNS & SAFETY PRODUCTS INC, P O BOX 87238, ATLANTA GA 30337 |
| 1637328 | ACTION TIRE COMPANY, ATTN: BANKRUPTCY DEPT, 410 LEEIS MILL ROAD, FOREST PARK GA 30050 |
| 1637329 | ADP PAYROLL & 401K DIVISION, ATTN: BANKRUPTCY DEPT, 5680 NEW NORTHSIDE DRIVE SUITE 170, ATLANTA GA 30345 |

1637330 ADVANCE DRAINAGE SYSTEMS, ATTN: BANKRUPTCY DEPT, DEPT 1130, CINCINNATI OH 45263-1130

1637331 ADVANTA BUSINESS SERVICES CORP, ATTN: BANKRUPTCY DEPT, POST OFFICE BOX 1228, VOORHEES NJ 08043-1228

1637332 AGENCY PREMIUM SERVICES, ATTN: BANKRUPTCY DEPT, POST OFFICE BOX 75150, BALTIMORE MN 21275-5150

1637455 AGGRECON INC, 1339 CANTON RD SUITE B, MARIETTA GA 30066

1637333 AIRBORNE EXPRESS, ATTN: BANKRUPTCY DEPT, POST OFFICE BOX 91001, SEATTLE WA 99111

1637335 AIRTOUCH CELLULAR, ATTN: BANKRUPTCY DEPT, POST OFFICE BOX 105818, ATLANTA GA 30348-5019

1637334 AIRTOUCH PAGING, ATTN: BANKRUPTCY DEPT, POST OFFICE BOX 105045, TUCKER GA 30085-5045

1637447 ALCATEL CONTRACTING INC, 2001 WESTSIDE PKWY #190, ALPHARETTA GA 30201

1637336 ALTERNATIVE RENTAL, ATTN: BANKRUPTCY DEPT, 1068 FOREST PARKWAY, LAKE CITY GA 30260

1637337 AMERICAN RADIO, 3770 GREEN INDUSTRIAL WAY, CHAMBLEE GA 30341

1637338 AMSTERDAM PRINTING, POST OFFICE BOX 701, AMSTERDAM NY 12010

1637450 AP ARCHITECTURE INC, 6407 IDLEWILD RD #500, CHARLOTTE NC 28212

1637339 ARCHER-WESTERN CONTRACTOR, SUITE 160, 340 INTERSTATE NORTH PARKWAY, ATLANTA GA 30339

1899393 AT & T Corp., One Oak Way, Berkeley Heights, NJ 07922

2335441 AT&T, One Oak Way, Berkeley Heights, NJ 07922

1637445 AT&T, POST OFFICE BOX 27-680, KANSAS CITY MO 618 -068

1637343 AT&T, 2 Gatehall Drive, Parsippany, NJ 07054

1637344 AT&T, POST OFFICE BOX 945800, MAILAND FL 32794-5800

1637346 AT&T, POST OFFICE BOX 914500, ORLANDO FL 32891-4500

1637341 ATLANTA BEVERAGE & BOTTLED WATER INC, 3645 PRESIDENTIAL PARKWAY, ATLANTA GA 30340

1637342 ATLANTA GAS LIGHT COMPANY, 89 ANNEX, ATLANTA GA 30389-0005

1637327 ATLANTA GAS LIGHT COMPANY, ATTN: BANKRUPTCY DEPT, POST OFFICE BOX 4569, ATLANTA GA 30302-4569

1637380 AUGUST GARTSIDE, 120 HANDCOCK DR, WOODSTOCK GA 30188

1973235 Advanta Leasing Corporation, 1020 Laurel Oak Rd., P.O. Box 1228, Voorhees, NJ 08043

1637470 B J SLAUGHTER, 2916 FIEDER WAY, REX GA 30273

1637451 BAKER CONCRETE CONSTRUCTION/ INSITE, P O BOX 386, ALPHARETTA GA 30239

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| 1637465 | BELLSOUTH, C/O JAMES M ANDERSON III PC, 5770 POWERS FERRY RD NW #205, ATLANTA GA 30327 |
| 1637348 | BELLSOUTH, 85 ANNEX, ATLANTA GA 30385-0001 |
| 1637347 | BELLSOUTH MOBILITY, SUITE 600, GLENRIDGE DRIVE, ATLANTA GA 30342-1368 |
| 1637349 | BROOKS BERRY HAYNIE, STATION N, POST OFFICE BOX 20174, ATLANTA GA 30325 |
| 1637467 | CAROL S POWELL, 4317 BUCKINGHAM CIRCLE, DECATUR GA 30035 |
| 1637350 | CAROLINA CRANE INC, POST OFFICE BOX 6578, N AUGUSTA SC 29841 |
| 1637466 | CASTLE ABATEMENT CORP, 620 RAMSEY AVE, HILLSIDE NJ 07205 |
| 1637351 | CITY OF ATLANTA REVENUE COLLECTOR, 105 CITY HALL, ATLANTA GA 30303 |
| 1637352 | CLARKLIFT OF ATLANTA INC, 610 NORTH-SIDE DRIVE NW, ATLANTA GA 30318 |
| 1637464 | CLARKLIFT OF ATLANTA INC, C/O GARY G AGNEW ESQ, 1884 GEORGIAN TERRACE, CHAMBLEE GA 30341 |
| 1637355 | CONSTRUCTION MARKET DATA, POST OFFICE BOX 941847, ATLANTA GA 31141 |
| 1637460 | CURLIS CAMPBELL, 3104 WESLEY BEND, DECATUR GA 30034 |
| 1637353 | Colonial Pacific Leasing Corp., Post Office Box 1100, Tualatin, OR 97062-1100 |
| 1637366 | D&J AUTO PARTS INC, 6882 MAX CLELAND BLVD, LITHONIA GA 30058 |

1637356 DEKALB COUNTY GEORGIA, REVENUE & LICENSE ADMINISTRATION, POST OFFICE BOX 100001, DECATUR GA 30031-7001

1637357 DEKALB COUNTY REVENUE COLLECTIONS, POST OFFICE BOX 1088, DECATUR GA 30031

1637358 DEKALB COUNTY TAX COMMISSIONER, POST OFFICE BOX 105002, ATLANTA GA 30348-5002

1637466 DEKALB COUNTY TAX COMMISSIONER, P O BOX 100004, DECATUR GA 30031-7004

1637359 DEKALB COUNTY WATER, POST OFFICE BOX 1027, DECATUR GA 30031-1027

1637360 DEKALB TOOL RENTAL, 3757 COVINGTON HIGHWAY, DECATUR GA 30032

1637361 DELUXE BUSINESS FORMS, POST OFFICE BOX 64500, ST PAUL MN 55164-0500

1637362 DEPARTMENT OF TRANSPORTATION, CONTRACT ADMINISTRATION ROOM 215, NO 2 CAPITAL SQUARE, ATLANTA GA 30334

1637363 DEREK DAILY, 149 HONEY SUCKLE CIRCLE, LAWRENCEVILLE GA 30245

1637364 DIAMOND BLADE WAREHOUSE, POST OFFICE BOX 46550, LINCOLNWOOD IL 60646

1637365 DIXIE CONSTRUCTION PRODUCTS, 4891 CLARK HOWELL HIGHWAY, COLLEGE PARK GA 30349

1637440 DUNN AND BRADSTREET, P O BOX 75949, CHICAGO IL 60675-5949

1637485 DYKES PAVING & CONSTRUCTION CO INC, C/O WILLIAM E ZACHARY JR, 1000 COMMERCE DR, DECATUR GA 30030

2083526 Dekalb Co, Treasury & Accounting, P.O. Box 1086, Decatur, GA 30031

1637367 EMRO MARKETING COMPANY, P O BOX 710964, CINCINNATI OH 45271-0964

1637368 EVANS SAND & GRAVEL INC, 114 QUARRY ROAD, STOCKBRIDGE GA 30281

1733629 Evans Sand & Gravel Inc., c/o Ernest D. Blounts, Esq., P.O. Box 427, Stockbridge, GA 30081

1637369 FAMILY CARE S DEKALB, 6038 COVINGTON HIGHWAY, DECATUR GA 30035

1637370 FARM PLAN, DEPT 77175, P O BOX 77000, DETROIT MI 48277-0175

1637371 FAULKNER CONCRETE PIPE COMPANY, P O BOX 1000 DEPT 165, MEMPHIS TN 38148

1637372 FEDERAL EXPRESS/, P O BOX 1140, MEMPHIS TN 38101-1140

1637373 FFI RENTALS INC, 3442 PINEMONT, HOUSTON TX 77018

1637449 FIRST STATE BANK, 4806 NORTH HENRY BLVD, STOCKBRIDGE GA 30281

1637326 FIRST UNION BANK, CENTRAL RECOVERY VA 7359, POST OFFICE BOX 13765, ROANOKE VA 24037-3765

1637484 FIRST UNION NATIONAL BANK, CENTRAL RECOVERY, P O BOX 13765, ROANOKE VA 24037-3765

1637374 FOLEY PRODUCTS CO, THE CONCRETE COMPANY, P O BOX 7877, COLUMBUS GA 31908-7877

1637376 FORD MOTOR CREDIT COMPANY, P O BOX 105332, ATLANTA GA 30349-5332

1637375 FORD NEW HOLLAND CREDIT, P O BOX 0507, CAROL STREAM IL 30132-0507

1637378 FRANKLIN QUEST, P O BOX 31456, SALT LAKE CITY UT 84131-0456

1637377 FRANKLIN'S PRINTING, 6125 COVINGTON HIGHWAY #8, DECATUR GA 30035

1637379 FUELMAN/MCFUEL FLEET SYSTEM, P O BOX 939353, ATLANTA GA 30377

1637384 G NEIL COMPANIES, P O BOX 451179, SUNRISE FL 33345-1179

1637462 GA DEPT OF REVENUE, P O BOX 740387, ATLANTA GA 30374-0387

1637463 GA Dept. of Labor, 148 International Blvd., Atlanta, GA 30303-1751

1637381 GE CAPITAL TOTAL AUDIO, 1990 DEPOOR AVENUE, ATLANTA GA 30318

1637439 GEORGIA CASUALTY, 4370 PEACHTREE ROAD, ATLANTA GA 31119-0720

1637382 GEORGIA POWER COMPANY, 96 ANNEX, ATLANTA GA 30396

1637454 GEORGIA UTILITY CONTRACTORS ASSOC, 1657 PHONIX BLVD SUITE 1, COLLEGE PARK GA 30349

1637383 GMAC, P O BOX 53014, CHARLOTTE NC 28253-3014

1637385 GOVERNMENT DATA PUBLICATIONS, 1155 CONNECTICUT AVE NW, WASHINGTON DC 20036

1637386 GRAINGER, 3417 LAWRENCEVILLE HIGHWAY, TUCKER GA 30084-5024

1637387 GRANITE CONSTRUCTION CO INC, 4888 FRONTAGE ROAD, FOREST PARK GA 30050

1637480 GUSTAVO RESENDIZ, 530A CASANOVA ST. ATLANTA GA 30315

1637441 HALLIBURTON SERVICES, 1981 JONESBORO RD, ATLANTA GA 30315

1637388 HERTZ RENTAL, P O BOX 26390, OKLAHOMA CITY OK 73126-0390

1637389 HOME DEPOT, P O BOX 660335, DALLAS TX 75266-0333

1637390 HOWELL INDUSTRIAL CLINIC, HELIAN HEALTH GROUP, 1100 SPRING ST SUITE 610, ATLANTA GA 30309

1637461 INTERNAL REVENUE SERVICES, P O BOX 105703, ATLANTA GA 30348-5703

1733625 Interstate East Office Park, Attn: Bankruptcy Dept., 2964 Ember Drive, Ste. 100, Decatur, GA 30034

1637391 J&L ASSOCIATES INC, P O BOX 42761, ATLANTA GA 30311

1637392 JOBTRAK, 1990 WESTWOOD BLVD #260, LOS ANGELES CA 90025

1637472 JOHNNY EPPS, 802 CREST DR, DECATUR GA 30035

1637399 L&W FINCH CONSTRUCTION, 1591 CONSTLEY MILL RD, P O BOX 90370, CONYERS GA 30208-8370

1637393 LASER PRODUCTS INC, 100 LASER INDUSTRIAL CT, FAIRBURN GA 30213

1637394 LEACH SAND AND GRAVEL INC, 379 LEES MILL ROAD, FOREST PARK GA 30050

1637395 LEASING ASSOCIATES, P O BOX 243, HOUSTON TX 77001

1637482 LEE PHILLIPS, 4133 CHURCH ST #S-2, CLARKSTON GA 30021

1637396 LENOX HEALTHCARE INC, 3155 PRESIDENTIAL DR #104, ATLANTA GA 30340

1637471 LEOPOLD CLARKE, 4356 PLEASANT PT DR #D, DECATUR GA 30034

1637448 LEVERAGE LEASING CO, 4125 SOUTH 94TH ST, OMAHA NE 68127

1637397 LIGHTNIN TRUCK RENTAL, 2555 UNIVERSITY PKWY, LAWRENCEVILLE GA 30243

1637398 LINDSEY JACKS DBA T&M HAULING, 1578 VAN BLECK AVE SE, ATLANTA GA 30316

1637457 Liberty Mutual Insurance Company, 100 Main Street, Dover, New Hampshire 03820

1637400 MARABLE-PIRKE INC, P O BOX 310023, ATLANTA GA 31131-0023

1637401 MARTIN-ROBBINS FENCE CO, 5197 HIGHWAY 78, STONE MOUNTAIN GA 30087

1637325 MAURICE TURNER, HASSETT COHEN & BEITCHMAN, 990 HAMMOND DRIVE SUITE 990, ATLANTA GA 30328

1637452 MAURICE TURNER, 4830 BROWNS MILL RD, LITHONIA GA 30058

1637483 MAURICE TURNER, CIO HASSETT COHEN & BEITCHMAN, 990 HAMMOND DR #990, ATLANTA GA 30328

1637402 MCARTHUR CONCRETE PRODUCE, P O BOX 798, ACWORTH GA 30101

1637403 MEDICAL SOLUTIONS INC, P O BOX 652, GRAYSON GA 30221-0652

1637476 MELVIN MCDOWELL, 2092 MARK TRAIL, DECATUR GA 30032

1637478 MICHAEL A MOSELY, 3196 CHAPEL ST, SCOTTDALE GA 30079

1637404 MICHAEL WELCH, 3399 PEACHTREE RD NE, ATLANTA GA 30326

1637405 MILLER SANITARY SUPPLIES, P O BOX 162, MCDONOUGH GA 30253

1637473 MILTON J LEE, 115 PLANTATION DR, CLARKSTON GA 30021

1637456 MITCHELL CONSTRUCTION CO INC, 6169 WEST LEES MILL ROAD, RIVERDALE GA 30274

1637406 MOBILECOMM, 72 PERIMETER CENTER E #7201, ATLANTA GA 30346

1637468 MONICA SLAUGHTER, 3669 MEADOW GLEN CIRCLE, ELLENWOOD GA 30049

1637407 MOTOROLA, P O BOX 905311, CHARLOTTE NC 28290-5311

1677393 Mountain West, d/b/a Office Depot Credit Plan, P.O. Box 7004, Sioux Falls, SD 57117

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| 1637411 | Mountain West, d/b/a Office Max Credit Plan, P.O. Box 7004, Sioux Falls, SD 57117 |
| 1637408 | NATIONAL CONSTRUCTION PRODUCTS, P O BOX 670854, MARIETTA GA 30066 |
| 1637409 | NEFF RENTAL, 3763 LONGMIRE WAY, DORAVILLE GA 30340 |
| 1637410 | NORTHLAKE REGIONAL MEDICAL, 1455 MONTREAL RD, TUCKER GA 30084 |
| 1637443 | Nationwide Property & Casualty Ins. Co., 3300 Williston Rd., Gainesville, FL 32608 |
| 1637412 | OFFICEMAX CREDIT PLAN, P O BOX 182378, COLUMBUS OH 43218-2378 |
| 1637413 | OWSLEY & SONS INC, P O BOX 651726, CHARLOTTE NC 28265-1765 |
| 2320606 | Office of Tax Commissioner, Dekalb County, 120 W. Trinity Place, Decatur, GA 30030 |
| 1637414 | PERSONNEL JOURNAL, P O BOX 55965, BOULDER CO 80322-5695 |
| 1637415 | PLANTS BY DESIGN, 3044 WALLACE LAKE RD, DOUGLASVILLE GA 30135 |
| 1637444 | PRADEEP K PATNAIK, 3920 RIVER RIDGE RD, CHARLOTTE NC 28226 |
| 1637416 | QUALITY BUSINESS SOLUTION, P O BOX 941293, ATLANTA GA 30341 |
| 1637417 | RAM TOOL & SUPPLY COMPANY, P O BOX 941293, ATLANTA GA 30341 |
| 1637475 | RAUL MARTINEZ, 1295 ROBERTS DR APT 1, ATLANTA GA 30315 |
| 1637442 | REINFORCED EARCH CO, P O BOX 777-W3385, PHILADELPHIA PA 19175-3385 |

1637418 RIDGEWAYS, P O BOX 420797, ATLANTA GA 30342

1637481 ROBERTO A SOTO, 2637 OLD HAPEVILLE #15A, ATLANTA GA 30315

1637477 RODNEY L JACKSON, 3850 MEMORIAL DR #C7, DECATUR GA 30035

1637419 ROLLINS TRUCK RENTAL, 1481 DOGWOOD DRIVE, CONYERS GA 30207

1637420 ROLTIME COURIER SERVICES, P O BOX 723006, ATLANTA GA 31139-0006

1637354 RON BOLAR DBA COMPUTER ZONE, SUITE B, 3256 ATLANTA ROAD, SMYRNA GA 30080

1637421 RUSSIA HOUSE INC, 4651 ROSWELL RD S201-C, ATLANTA GA 30342

1637422 RYDER TRUCK RENTAL INC, P O BOX 938, JONESBORO GA 30237

1790873 Ryder Shared Services Center, 6000 Windward Parkway, Alpharetta, GA 30302

1637424 S M RYCE ELECTRIC, 2889 KNOLLVIEW DR, DECATUR GA 300034

1637423 SIGNS R US, 4765 MEMORIAL DR SUITE B, DECATUR GA 30032

1637425 SOUTHERN METER, P O BOX 550171, TAMPA FL 33655-0171

1637426 SOUTHERN REGIONAL, 11 U RIVERDALE ROAD, RIVERDALE GA 30274

1637427 STAMEY STEEL & CONCRETE, P O BOX 106, LITHIA SPRINGS GA 30057

1637428 STANDARD TRUCK, & EQUIPMENT, 1155 HILL ST SE, ATLANTA GA 30315

1637479 STEVE SLAUGHTER, 3669 MEADOW GLEN CIRCLE, ELLENWOOD GA 30049

1637429 SUPERSIGNS SUPERFAST, 7308 GA HIGHWAY 85, RIVERDALE GA 30274

1637430 Superior Rope & Slings, c/o Scott and Goldman, Inc., 11285 Elkins Rd., Bldg. E, Roswell, GA 30076

1637469 TERRY SLAUGHTER, 269 HIGHWAY 138 #805, RIVERDALE GA 30274

1637458 TEXACO/LANCE OIL CO INC, 3475 LAKE DR, SMYRNA GA 30082

1637340 THE ATLANTA JOURNAL & CONSTITUTION, POST OFFICE BOX 4689, ATLANTA GA 30302

1637431 THOMAS CONCRETE, 2700 CUMBERLAND PKWY #500, ATLANTA GA 30339

1637432 TIP DEPT 587, P O BOX 9708, MACON GA 1297-9708

1637433 TRAVEL INFORMATION SERVICES, 278 HILDERBRAND DR NE, P O BOX 720715, ATLANTA GA 30358

1733622 Tim Munson Esq., Westwood Professional Center, 11912 Elm Street, Ste. 20, Omaha, NE 68144

1725700 Transport International Pool, Inc., 426 West Lancaster Ave., Devon, PA 19333, Attn: George Petrisko

1637434 UNSFORD THURMOND, 1054 HILL ST. ATLANTA GA 30315

1637459 URBAN MILLS, 6501 TREE CREST PKWY, DECATUR GA 30035

1887355 United Health Care, 450 Columbus Blvd., P.O. Box 150450, Hartford, CT 06115-0450

1637453 WACHOVIA CORPORATION, P O BOX 101935, ATLANTA GA 30392

1637435 WILLIE BROOKS CONTRACTING, 1165 BANKHEAD HIGHWAY, ATLANTA GA 30318-6675

1637474 WILLIE LEE MADDOX, P O BOX 446, LOCUS GROVE GA 30248

1637436 WORLD OMNI FINANCIAL CORP, P O BOX 105218, ATLANTA GA 30348-5218

1637437 XEROX CORP, P O BOX 7598, PHILADELPHIA PA 19101-7598

1637438 XTRA LEAVE, P O BOX 99262, CHICAGO IL 60693-9262

1741123 Xerox Corporation, 800 Carillon Parkway, St. Petersburg, FL 33716

The following entities were served by electronic transmission.

NONE. TOTAL:0

* * * * BYPASSED RECIPIENTS (undeliverable, * duplicate) * * * *

2062446 * Melvin McDowell, 2092 Mark Trial, Decatur, GA 30032

TOTALS: 0, *1

I, Joseph Speetjens, declare under the penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the

**Certificate of Service and that it is true and correct to the best of my information and belief.**

**Date: 02/14/98**

**Signature: /s/ Joseph Speetjens**

## APPENDIX H

## IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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No. 99-15093-JJ

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IN RE: SLAUGHTER COMPANY & ASSOCIATES,

Debtor.

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ALCATEL CONTRACTING (NA), INC.,

Plaintiff-Appellee,

versus

NEIL C. GORDON,

Trustee-Appellant.

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On Appeal from the United States District Court for the Northern District of Georgia

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ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

(Opinion _____, 11th Cir., 19___, ___ F.2d ___).

(Filed Sep. 25, 2000)

Before: TJOFLAT and HULL, Circuit Judges, and PROPST*, District Judge.

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*Honorable Robert B. Propst, U.S. District Judge for the Northern District of Alabama, sitting by designation.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Phyllis Kravitch
UNITED STATES CIRCUIT JUDGE

ORD-42
(6/95)